

PART 429—PROCEDURE TO PROCESS AND RECOVER THE VALUE OF RIGHTS-OF-USE AND ADMINISTRATIVE COSTS INCURRED IN PERMITTING SUCH USE

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AUTHORITY: 43 U.S.C. 387 (53 Stat. 1196), as amended by 64 Stat. 463, c. 752 (1950); Department of the Interior Manual Part 346, Chapters 1, 2, 3, and 4; 43 U.S.C. 501; Independent Offices Appropriation Act (31 U.S.C. 483a); and Budget Circular A-25, as amended by transmittal memorandums 1 and 2 of Oct. 22, 1963, and April 16, 1974.

SOURCE: 48 FR 56223, Dec. 20, 1983, unless otherwise noted.

§ 429.1 Purpose.

The purpose of this part is to meet the requirements of the Independent Offices Appropriation Act (31 U.S.C. 483a) and Departmental Manual Part 346, Chapters 1.6 and 4.10, to set forth procedures for the Bureau of Reclamation (Reclamation) to recover the value of rights-of-use interests granted to applicants, and for the collection of administrative costs associated with the issuing of rights-of-use over lands administered by Reclamation. This part also refers to costs incurred by Reclamation when, at the request of other agencies and parties, Reclamation gives aid and assistance in rights-of-use matters.

These regulations apply to uses of lands and interests in land under the jurisdiction of Reclamation granted to others by the Commissioner of the Bureau of Reclamation. Those interests issued or granted for the replacement or relocation of facilities belonging to others under section 14 of the Reclama-

tion Project Act of August 4, 1939, 43 U.S.C. 389 are excepted.

§ 429.2 Definitions.

As used in this part:

(a) *Commissioner* means the Commissioner of the Bureau of Reclamation or his designated representative.

(b) *Reclamation* means the Bureau of Reclamation.

(c) *Regional Director* means any one of the seven representatives of the Commissioner designated to act for the Commissioner in specified rights-of-use of actions. The Regional Directors may redelegate certain of their authorities for granting rights-of-use to the supervising heads of field offices.

(d) *Rights-of-use* includes rights-of-way, easements, leases, permits, licenses, or agreements issued or granted by the Regional Directors to permit the occupying, using, or traversing of lands under the jurisdiction, administration or management of the Bureau of Reclamation, and issued under the authority granted to him for the purpose. The term "rights-of-use" does not include the leasing of land in the custody or under the control of Reclamation for grazing, agriculture, or any other purpose where a greater return will be realized by the United States through a competitive bidding process.

(e) *Other agencies or others* means all Federal, State, private individuals, partnerships, firms or corporations, and local governments agencies not connected in any way with Reclamation, that request rights-of-use either directly or indirectly from Reclamation.

(f) *Rights-of-use assistance* means any assistance to obtain a use authorization given upon request to another party. Such assistance includes, but is not limited to, work in the processing of environmental requirements and the preparing, checking, and inspecting of engineering data and standards.

(g) *Value of rights-of-use* means the value of the rights, privileges, and interests granted by Reclamation for the use of land under its custody and control, as determined by an appraisal by a qualified appraiser using approved methods, in accordance with § 429.3 of this part.

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(h) *Administrative costs* means all direct or indirect costs including appraisal costs if required, incurred by Reclamation in reviewing, issuing, and processing of rights-of-use requests or the assisting of others in their rights-of-use matters, calculated in accordance with the procedures established by Departmental Manual 346, "Cost Recovery," Chapters 1, 2, 3, and 4.

(i) *Grantor or Permitter* means the Bureau of Reclamation, U.S. Department of the Interior.

(j) *Grantee or User* means the agency, firm, partnership, or individual who requested and to whom is granted the right-of-use.

(k) *Documentation of administrative costs.* This documentation shall mean documentation in accordance with the provisions of part 346, chapters 1, 2, 3, and 4 of the Departmental Manual. Administrative costs will be documented through the accurate recording and accounting of costs associated with a right-of-use. This documentation shall include both direct and indirect costs, such as:

- (1) Personnel costs.
 - (i) Direct labor.
 - (ii) Fringe benefits.
 - (iii) Additional benefits.
- (2) Material costs, printing costs, and other costs related directly with a specific right-of-use.
- (3) Exclusions.
 - (i) Management overhead.
 - (ii) Normal costs not directly associated with the specific right-of-use.
- (1) *Secretary* shall mean the Secretary of the Interior.

§ 429.3 Establishment of the value of rights-of-use.

(a) The value of a right-of-use shall be determined by Reclamation. The appraised value of a right-of-use shall be established by a Reclamation staff or contract appraiser in accordance with Reclamation Instructions for *Land Appraisal*. The appraisal shall be for the fair market value for the requested right or privilege, and result from the diminution of value of the remainder using the before and after appraisal approach, or any other method generally approved within the real estate appraising profession for such valuation.

(b) If the applicant has been or is currently using the right-of-use area without authorization, and if it can be determined that the unauthorized use of Federal Lands was unintentional and not due to carelessness or neglect on the part of the applicant, then the value of a right-of-use shall not include the value of any prior unauthorized use by the applicant of the Reclamation land.

(c) If the applicant's prior unauthorized use can be determined to be intentional on his part or to be a result of his carelessness or neglect, then the value of such previous use shall be determined as assessed to the user in addition to the appraised value of the right-of-use.

§ 429.4 Request by other governmental agencies and nonprofit organizations for rights-of-use.

Rights-of-use requested by nonprofit organizations or nonprofit corporations may be provided with no charge being made for the value of these rights-of-use when it is determined that the use will not interfere with the authorized current or planned use of the land by Reclamation. Rights-of-use requested by other Federal or other governmental agencies will be granted with fair market value reimbursement unless, a reasonable opportunity exists for the exchange of rights-of-use privileges, and there exists an interagency agreement providing for such exchange. Other agencies and nonprofit organizations will be required to reimburse Reclamation for all administrative costs which are deemed to be excessive to normal costs for granting similar rights-of-use request. All billings for administrative costs will be well documented (§ 429.2(k)). All requests will provide the information required in § 429.6(a), and (b).

§ 429.5 Request by others for assistance.

The agency requesting assistance from Reclamation in acquiring a right-of-use shall be required to reimburse Reclamation for any administrative costs deemed to be in excess of the average normal for the specific service or assistance (§ 429.2(h)) and would not normally be foreseen and covered in

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the Reclamation regular appropriation requests. Any billing for these excessive costs shall be well documented (§ 429.2(k)).

§ 429.6 Applications for rights-of-use.

The applicant for a right-of-use over land or estate in land, in the custody and control of Reclamation, must make application to the Regional Director of the region in which the land is located or to the affected field office. The addresses for the seven Regional Directors are located in § 429.11. A right-of-use will not be granted when it is determined that the proposed right-of-use will interfere with the functions of Reclamation or its ability to maintain its facilities.

(a) The application does not have to be in any particular form but must be in writing. The application must contain at least the following items:

(1) A detailed description of the proposed use of Reclamation's lands.

(2) A legal description of either aliquot parts or metes and bounds, or as an absolute minimum, a description of the route or area of use desired on Reclamation's lands, and as accurate delineation of the use area on a map as it is possible to provide without making a survey.

(3) A map or drawing showing the approximate location of the requested right-of-use.

(b) An initial deposit fee of \$200 must accompany the initial application. If, after a preliminary review of the application Reclamation determines the granting of a right-of-use is incompatible with present or future uses of the land and the right-of-use cannot be granted, \$150 of the \$200 fee will be returned. The remaining \$50 of the \$200 fee will be retained by Reclamation regardless of its disposition of the right-of-use request. No refund will be made for any deposits if the applicant refuses to accept the right-of-use after it is prepared and offered. Applicants will be required to pay any administrative costs which are in excess of the \$200 deposit for the preparation of right-of-use as well as the value to the right granted. Any administrative costs less than \$150 will result in an appropriate refund to the applicant or may be applied to the value of the right-of-use at the

discretion of the applicant. This shall apply equally to requested rights-of-use which are offered by Reclamation and are rejected by the applicant, as to those which the applicant accepts. Any billing for administrative costs shall be well documented. (§ 429.2(k).) At the discretion of the Regional Director, applications made by other Federal agencies need not be accompanied by either of the above deposits or fees.

(c) All fees and costs may be waived or reduced at the discretion of the Regional Director, when:

(1) It is determined that the applicant for the right-of-use will soon be, or is in the position of granting a right-of-use to the United States, and an opportunity for a reciprocal agreement exists, providing an agreement between Reclamation and the applicant is on file permitting such an exchange of uses.

(2) The initial deposit and the administrative costs would exceed the value of the interests and rights to be granted. The \$50 minimum fee will usually be retained.

(3) The holder provides without charges, or at a reduced charge, a valuable service to the general public or to the programs of the Department of the Interior; or

(4) The right-of-use is a result of a service requested by the Federal Government or a governmental agency.

(d) The applicant also may, at the discretion of the Regional Director, be required to furnish, or agree to furnish, the following additional material before Reclamation grants a right-of-use:

(1) A legal land description and/or a map or plat of the requested right-of-use. The description map or plat should relate to Reclamation's land boundaries.

(2) Detailed construction details, construction specifications, engineering drawings, power flow diagrams, one-line diagrams, and any other plans and specifications which may be applicable.

(3) Statements, reports, or other documents already prepared or which normally will be prepared by the applicant which may be used by Reclamation to satisfy the requirements of the National Environmental Policy Act (42 U.S.C. 4321 through 4347) or other legal

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requirements of Reclamation in granting the applications right-of-use request.

(4) An agreement to complete or assist in completing Reclamation's requirements towards compliance with cultural resource policies.

(e) The applicant shall pay any excess administrative costs which Reclamation incurs which are in excess to the initial deposit of \$200 required by paragraph (b) of this section prior to the issuance of the right-of-use. All billing for administrative costs shall be well documented by Reclamation.

(f) Prior to the issuance of the right-of-use instrument the applicant shall also pay Reclamation a fair market value of the right and privilege requested for the use of Reclamation's lands.

This value shall be determined by an appraisal made, as prescribed in § 429.3 of this regulation. Those applicants meeting the provisions of § 429.4 may be excepted from this provision. The decision to grant an exemption under § 429.4 will have the justification well documented.

(g) Information Collection: The information collection requirements contained in § 429.6 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, OMB 1006-003. The information is being collected to assist in the determination for the granting of a right-of-use. The information will be used to assure the appropriateness of such a grant and that the technical and financial resources of the applicant are sufficient to complete the project. Response is required to obtain the right-of-use.

§ 429.7 Terms and conditions of and for the rights-of-use.

(a) The right-of-use granting document shall contain all special conditions or requirements which are determined by the Regional Director to be necessary to protect the interest of the United States.

(b) Any grant of a right-of-use for a term of 25 years or longer must have the consent of any involved water user organization pursuant to the legal requirements of 43 U.S.C. 387. Concurrence in and approval of uses for less than a 25-year period may be requested

of the water users organization at the discretion of the responsible Regional Director. As a minimum, the water user's organization shall be notified of the right-of-use application prior to its being granted.

(c) Reclamation's land-use stipulation appearing in § 429.8 shall be included in all perpetual right-of-way easements granted, excepting grants to other Federal agencies.

(d) Temporary rights-of-use instruments shall contain a termination clause in the event the applicants use becomes, or may become, an interference with the Reclamation's use of the land.

(e) Except for grants of rights-of-use to Federal agencies, the use instruments shall contain a hold harmless clause found in § 429.9.

(f) The applicant must show that any legally required permits to construct power transmission lines in excess of 100 kilovolt have been secured by the applicant from the appropriate power marketing authority prior to Reclamation's granting a right-of-way for such line.

§ 429.8 Reclamation land-use stipulation.

There is reserved from the rights herein granted, the prior rights of the United States acting through the Bureau of Reclamation, Department of the Interior, to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for severance or other damage to the grantee's work; provided, however, that if such reserved rights are not identified in at least general terms in this grant and exercised for works authorized by the Congress within 10 years following the date of this grant, they will not be exercised unless the grantee, or grantee's successor in interest is notified of the need, and grants an extension or waiver. If no extension or waiver is granted, the Government will compensate, or institute mitigation measures for any resultant damages to works placed on said lands pursuant to the rights herein granted. Compensation shall be in the amount of the cost of reconstruction of grantee's works to accommodate the exercise of the Government's

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reserved rights. As alternatives to such compensation, the United States, at its option and at its own expense, may mitigate the damages by reconstructing the grantee's works to accommodate the Government facilities, or may provide other adequate mitigation measures for any damage to the grantee's property or right. The decision to compensate or mitigate is that of the appropriate Regional Director.

§ 429.9 Hold harmless clause.

(a) The following clause shall be a part of every land-use document issued by Reclamation:

The grantee hereby agrees to indemnify and hold harmless the United States, its employees, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising out of the grantee's activities under this agreement.

(b) To meet local and special conditions, the Regional Director, upon advice of the Solicitor, may modify this or any other provision of these rules with respect to the contents of the right-of-use instrument.

§ 429.10 Decisions and appeals.

(a) The Regional Director, acting as designee of the Commissioner, shall make the determinations required under these rules and regulations. A party directly affected by such determinations may appeal in writing to the Commissioner, Bureau of Reclamation, within 30 days of receipt of the Regional Director's determinations. The affected party shall have an additional 30 days thereafter within which to submit a supporting brief memorandum to the Commissioner. The Regional Director's determinations will be held in abeyance until the Commissioner has reviewed the matter and rendered a decision.

(b) Any party to a case adversely affected by final decision of the Commissioner of the Bureau of Reclamation, under this part, shall have a right of appeal to the Director, Office of Hearing and Appeals, Office of the Secretary, in accordance with the procedures in title 43 CFR part 4, subpart G.

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§ 429.11 Addresses.

Regional Director,
Pacific Northwest Region,
Bureau of Reclamation,
Federal Building, U.S. Court House,
550 W. Fort Street,
Boise, Idaho 83724

Regional Director,
Lower Colorado Region,
Bureau of Reclamation,
Nevada Highway and Park Street,
Boulder City, Nevada 89005

Regional Director,
Southwest Region,
Bureau of Reclamation,
Commerce Building,
714 S. Tyler, Suite 201,
Amarillo, Texas 79101

Regional Director,
Lower Missouri Region,
Bureau of Reclamation,
Building 20, Denver Federal Center,
Denver, Colorado 80225

Regional Director,
Mid-Pacific Region,
Bureau of Reclamation,
Federal Office Building,
2800 Cottage Way,
Sacramento, California 95825

Regional Director,
Upper Colorado Region,
Bureau of Reclamation,
125 S. State Street,
Salt Lake City, Utah 84147

Regional Director,
Upper Missouri Region,
Bureau of Reclamation,
Federal Office Building,
316 N. 26th Street,
Billings, Montana 59103

PART 430—RULES FOR MANAGEMENT OF LAKE BERRYESSA

AUTHORITY: Title VII, Pub. L. 93-493, 88 Stat. 1494.

§ 430.1 Concessioners' appeal procedures.

The procedures detailed in title 43 CFR part 4, subpart G, are made applicable to the concessioners at Lake Berryessa, Napa County, California, as the procedure to follow in appealing decisions of the contracting officer of the Bureau of Reclamation, Department of the Interior, or his authorized representatives on disputed questions concerning termination for default or